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January 6, 2005

William B. Moffitt
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Wmoffitt@Cozen.Com

Via Facsimile and First-Class Mail

Terry Zitek, Esq.
Walter Furr, Esq.
Office Of The United States Attorney
Middle District Of Florida
400 North Tampa Street, Suite 3200
Tampa, FL 33602

Re: **United States v. Dr. Sami Al-Arian**

Dear Gentlemen:

We have repeatedly asked you if the government has relied on any evidence of any wiretaps other than those the government has told us about (see letter dated January 27, 2004, attached as Exhibit A, and letter dated March 10, 2004, attached as Exhibit B). We now believe that the government has relied upon in-part evidence derived from an Israeli wiretap.

"The Israeli intelligence provided communications between the [Islamic Jihad] headquarters and [Islamic Jihad] members in the U.S., primarily Bashir Nafi and Sami Al-Arian" during the early 1990s, the former top official said. Nafi, one of those named in the indictment, was deported from the United States to Great Britain in 1996. "This information illustrated the fact that Sami and Bashir were members of the *Majlis Ashura*, or Council of Advisors, of the [Islamic Jihad]. As one of the senior advisors, Sami had input into some of the [Islamic Jihad] operations in Israel and the territories, and allegedly helped to funnel funds collected in the U.S. to Jihad headquarters... Since then, U.S. intelligence has determined that Sami remained a member of the council of advisors."

We believe that reliance on information from Israeli wiretaps falls within the parameters of something akin to the silver platter doctrine. In other words, the Israeli tap does not meet the standards of probable cause that would be required in the U.S. and thus the product of the tap would not be permitted under the laws of the United States to be used as evidence against the accused.


Terry Zitek, Esq.
Walter Furr
January 6, 2005

Page 2


We are requesting that the government admit or deny whether any evidence that has been or will be utilized by the government in this matter is or has been derived in any way from an Israeli or other foreign wiretap.

We request this information so that the defense may prepare an appropriate motion to suppress. Further, we request that all of Dr. Arian's communications supplied by the Israeli government be immediately supplied to the defense as these communications are clearly covered by Rule 16.

Sincerely,



By: William B. Moffitt
COZEN O'CONNOR



By: Linda Moreno
Attorney At Law

Enclosures

cc: Stephen N. Bernstein, Esq. (via first-class mail)
Bruce G. Howie, Esq. (via first-class mail)
Kevin T. Beck, Esq. (via first-class mail)
Wadie E. Said, Esq. (via first-class mail)

Exhibit

A

ASBILL MOFFITT & BOSS
CHARTERED

ATTORNEYS AT LAW

THE PACIFIC HOUSE

SECOND FLOOR

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WASHINGTON, D.C. 20009-2520

OF COUNSEL

WILLIAM J. MERTENS*

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January 27, 2004

VIA FACSIMILE

Paul I. Perez, Esq.
Terry Zitek, Esq.
Walter Furr, Esq.
Office of the United States Attorney
Middle District of Florida
400 North Tampa Street, Suite 3200
Tampa, FL 33602

Re: United States v. Dr. Sami Al-Arian
Discovery Matters

Gentlemen:

We are writing regarding discovery in the Al-Arian matter in an effort to clarify some issues that became apparent after the hearing on January 22.

In the hearing, Mr. Zitek referenced 800 "relevant" conversations as "minimized" conversations. Should we take that to mean that the recorded conversations are edited, i.e., that the recorded conversations are not recordings of the entire conversation that took place at that time on that date, but only that portion of the conversation that whomever was monitoring it thought was relevant to whatever intelligence investigation was ongoing at that time? Please explain.

We would also like clarification as to the exact nature of the FISA surveillance in this matter. While it appears obvious that telephone and fax lines were monitored, we are requesting information on whether any other types of surveillance authorized by either FISA or Title III were undertaken. Were there any surreptitious entries that involved the placement of any type of monitoring devices in the home, office or any place in which Dr. Al-Arian had a possessory interest? Further, we are requesting information as to whether, during the course of this investigation, Dr. Al-Arian was overheard on any electronic surveillance that the government had conducted on any other targets of any other investigation(s).

We are further requesting whether the government is seeking to utilize any electronic surveillance of Dr. Al-Arian by any law enforcement or intelligence agency of any foreign government. If so, please provide all information in your possession concerning such surveillance, including but not limited to the dates, times and places of the surveillance, the exact nature of the surveillance (i.e., wiretap, etc.) and what government and what agency of that government maintained the surveillance.

Additionally, we are requesting the date that FISA surveillance was initiated on Dr. Al-Arian, the dates of all extensions, and when, if ever, the surveillance terminated. We are further requesting whether any of the surveillance of Dr. Al-Arian involved the monitoring of any arguably privileged matters. If so, we request that the product of such surveillance be produced immediately. We are also requesting information concerning how any privileged material was handled during the course of the investigation. In particular, we would like to know what, if any, precautions were instituted to wall off the utilization of privileged materials from the agents or prosecutors in this matter, and whether any arguably privileged conversations were in any way utilized in the preparation of the indictment.

Lastly with regard to FISA monitoring, we would like to know whether any of the monitored conversations were multiple-party conversations in English. We seek production of any monitored conversations in English.

As we have requested previously, pursuant to Brady v. Maryland and its progeny, we request all translations of any conversations that differ in any way from translations utilized in the preparation of the indictment, including the current translations, any previous translations, and the translation(s) used for the indictment. We are now formally requesting the same information regarding the faxes. Additionally, we are once again requesting the names and addresses of any translators involved in the initial phases of the investigation where the government is intending to offer a translation that in any way differs from an earlier translation.

We are also requesting any information as to whether any person named in the indictment has ever been listed by the FBI or any intelligence or law enforcement agency of the United States as an "informant" or an "asset" of any kind. This request includes, but is not limited to, Dr. Al-Arian or any member of his family. Additionally, we request that the government provide any and all written reports concerning such listings. The defense further requests any information concerning whether any individuals, either named or unnamed in the indictment, have acted as informants as described in Roviaro v. United States, 353 U.S. 53 (1957) with respect to any aspect of this investigation.

With respect to the affidavit in support of the search warrant that was authorized on February 19, 2003 (the Myers affidavit), we have only been provided with 86 of the 113 pages. We specifically request pages 87 to 113 of the affidavit or, in the alternative, an explanation as to why we have yet to receive the complete affidavit.

With request to the searches, we are requesting all information regarding the seizure of privileged information, including what, if any, arguably privileged materials were seized, how they were handled; what, if any, precautions were taken to avoid the seizure of privileged materials; how any arguably privileged materials were maintained; whether any arguably privileged materials were in any way utilized in the preparation of the indictment in this matter; and whether these materials were in any way walled off from the prosecutors or agents involved in this prosecution.

We are also requesting information concerning whether the government monitored the Dr. Al-Arian's e-mail communications. If there was any monitoring of e-mails, the defense requests information concerning whether the monitoring occurred in real time. We also request that all monitored e-mails be produced as discovery in this matter. We are also seeking the authority under which such monitoring occurred.

Additionally, we are requesting all information regarding the existence of any "mail cover(s)" on any member of the Al-Arian family. Specifically, we are requesting any list made regarding the origin of any mail and whether the mail cover involved the surreptitious opening of any mail. If so, the defense is seeking all information concerning such mail cover and the authority upon which the government proceeded.

Finally, with respect to all searches in this matter, we are requesting all returns that were filed by any agent.

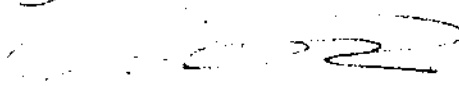
Sincerely,



William B. Moffitt, Esq.



Linda Moreno, Esq.



Peter B. Paris, Esq.

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TELECOPIER COVER SHEET

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THE FOLLOWING PAGES ARE FOR:

TO:	Paul I. Perez, Esq. Terry Zitek, Esq. Walter Furr, Esq.	FAX:	813-274-6108
COMPANY:	US Attorney (Middle District of Florida)	PHONE:	813-274-6000
FROM:	William Moffitt		
DATE:	1/27/04		
RE:	US v. Dr. Sami Al-Arian		
cc:			

COMMENTS:

Please see attached letter.

No. of Pages:
(Including Cover)

Original Sent by Mail:

Original Not Sent by Mail: x

Exhibit B

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U.S. Department of Justice
United States Attorney
Middle District of Florida

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Orlando, Florida 32805
407/648-7500
407/648-7643 (Fax)

Reply to: Tampa, Florida
Telephone: 813/274-6336
Facsimile: 813/274-6108

March 10, 2004

William B. Moffitt, Esquire
Asbill Moffitt and Boss, Chtd.
The Pacific House
1615 New Hampshire Avenue, N.W.
Washington, DC 20009

Linda Moreno, Esquire
1718 E. 7th Avenue, Suite 201
Tampa, Florida 33605

Re: United States v. Sami Amin Al-Arian, Case No. 8:03-CR-77-T-30TBM
Discovery Letters dated January 27, 2004 and February 3, 2004

Mr. Moffitt and Ms. Moreno

Letter of January 27, 2004

1. The 800 relevant conversations and faxes discussed by the government at the hearing on January 22, 2004 were not minimized. They are available in their entirety within the discovery being provided by the government. They were all obtained pursuant to FISA intercept orders.

2. In addition to monitoring telephone and fax lines, the government utilized FISA orders on Al-Arian's computer and an external microphone at WISE. No surreptitious entry was involved to place any monitoring device. We decline to answer, at this time, whether Al-Arian was overheard on any electronic surveillance that the government conducted on any other targets of any other investigations. We are aware of our obligations under Rule 16(a)(1)(B)(i) of the Federal Rules of Criminal Procedure and the Brady doctrine, and will proceed accordingly.

3. At this time, the government is not seeking to utilize any electronic surveillance by any law enforcement or intelligence agency of any foreign government.

Letter to William E. Moffitt, Esquire and Linda Moreno, Esquire
Dated March 10, 2004

4. The labels on each disk provided in discovery indicate the dates of electronic surveillance for each target and for each communications facility. If any privileged material was intercepted, no tech cut was produced. This material, if it exists, is included in the recorded information being provided in discovery. This material was minimized. If it exists, the prosecution and agents are unaware of this information. Therefore, it was not utilized in the preparation of the indictment.

5. The written analysis created by the translators of the non-redacted FISA communications indicate whether the communication was in English. They have been provided with the other conversations on the disks you have received.

6. A Brady request for translations which "differ in any way" from translations which were used to prepare the communications described in the overt acts in the indictment is overly broad as a matter of law. In United States v. Zambrana, 841 F.2d 1320, 1337 (7th Cir. 1988), with regard to the accuracy of translations, the Seventh Circuit held:

In our view, a foreign language translation is sufficiently accurate to assist the jury if the translation reasonably conveys the intent or idea of the thought spoken. It is axiomatic that a translation of most foreign languages to English (and vice versa) can never convey precisely and exactly the same idea and intent comprised in the original text, and it is unrealistic to impose an impossible requirement of exactness before allowing a translation to be considered by a jury

Id. at 1337. Applying this standard of accuracy to Brady determinations, it becomes clear that only a translation which does not reasonably convey the intent or idea of the thought spoken (or misidentifies the speaker) can truly be considered potentially Brady, not a transcript which merely "differs in any way" with another.

7. Sami Al-Arian was a source of information for the FBI for a brief time. We decline to answer any other request in this paragraph.

8. From Page 87 onward, the affidavit contains a copy of the indictment in this case. The affidavit has been unsealed and should be available for your review at the courthouse.

9. Arguably privileged matters, if seized, were minimized and walled off from the prosecutors and agents in this case.

Letter to William E. Moffitt, Esquire and Linda Moreno, Esquire
Dated March 10, 2004

10. The government monitored e-mail communications of Sami Al-Arian pursuant to a FISA order. This material is on disks which we are holding until we obtain the software to enable you to view them. When the software arrives, it will be provided to you with the disks.

11. A mail cover was used during this investigation. The mail cover did not involve the surreptitious opening of mail

12. The court and government are still attempting to rebuild the court file regarding the search warrants

Letter of February 3, 2003

1. Any note or report in our possession of the INS examiner who conducted the interview of Sami Al-Arian is available in the discovery.

2. We have no information whether Sami Al-Arian has been an asset of agencies such as the CIA or NSA. After discussing the matter with your client, if you have specific information regarding an agency, please let us know and we will investigate it.

3. We have no materials in our possession that were the result of a security investigation of Sami Al-Arian

4. If we possess any photographs or documents regarding a meeting with the President or his staff, they are available in the discovery.

Sincerely,

PAUL I. PEREZ
United States Attorney


TERRY A. ZITEK
Executive Assistant U.S. Attorney

cc: James Livingston, Supervisory Special Agent
Federal Bureau of Investigation

FORWARD

FEBRUARY 28, 2003

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Israeli Spies Aided Feds In Readyng 'Jihad' Case

Mossad Key On Al-Arian

By MARC PERELMAN
FORWARD STAFF

Intelligence supplied by Israel played a key role in the indictment last week of University of South Florida professor Sami Al-Arian on charges that he is a leader of the Islamic Jihad Palestinian terrorist group, the Forward has learned.

An FBI delegation traveled to Israel late last year to collect intelligence obtained by Israel during the mid-1990s, a former top counterterrorist official said on condition of anonymity. "The evidence the U.S. government has is intelligence, much of it from the Israeli government, relating to 1994 — when the Mossad had a penetration of [Islamic Jihad] headquarters in Damascus," the official said. "Much of the intelligence was turned over to the FBI on a recent visit to Israel."

The FBI and the Justice Department would not comment.

Jonathan Peled, a spokesman for the Israeli Foreign Ministry, acknowledged that Israel was cooperating with American authorities, although he said he did not have specific knowledge about the Al-Arian case or of the FBI visit.

Matthew Levitt, a former FBI official now with the Washington Institute for Near East Policy, a pro-Israel think tank, acknowledged that "Israel has every reason to be very forthcoming" on Islamic Jihad and that he had "heard about" the FBI trip.

However, he stressed that "there was no reason to assume that the indictment was not mostly based on U.S. intelligence and police work," essentially phone and fax wiretaps started in 1994.

Al-Arian, a tenured computer engineering professor at the University of South Florida, was charged with racketeering along with seven other people. In a 50-count indictment unsealed last Thursday in Tampa, prosecutors accused the eight men of conspiring since 1984 to support Islamic Jihad by helping finance and organize suicide bombings in Israel. It is the first time an indictment is centered on terrorist acts committed abroad. Four men were arrested — including Al-Arian — and the other four remain at large and abroad. They face life imprisonment if convicted.

Born in Kuwait to a family of Palestinian refugees, Al-Arian moved to the United States in 1978 and has been a permanent resident since 1989. Al-Arian is described in the indictment as a member of the top Islamic Jihad advisory council, the group's leader in the United States and the group's international financial chief officer.

The professor, who was suspended last year from the University of South Florida, has consistently denied the claims, telling reporters last week that his indictment was "all about politics." His supporters have consistently raised the issue of free speech and Arab advocacy groups say he is a victim of a discriminatory campaign fuelled by the post-September 11 climate.

In public appearances and interviews last week, Attorney General John Ashcroft hailed the indictment as a triumph for the new prerogatives granted his department under the 2001 Patriot Act to use intelligence in criminal cases in ways that were previously off limits, particularly wiretaps.

Those new powers were affirmed by an appellate court decision last November. Following the ruling, Ashcroft gave prosecutors a "broad green light" to pursue criminal charges in cases such as Al-Arian's, he told The New York Times.

Concretely, the FBI decided to use the wiretaps it had in its possession for years and to send a team to Israel to collect additional information on the professor.

"The Israeli intelligence provided communications between the [Islamic Jihad] headquarters and [Islamic Jihad] members in the U.S., primarily Bashir Nafi and Sami Al-Arian" during the early 1990s, the former top official said. Nafi, one of those named in the indictment, was deported from the United States to Great Britain in 1996. "This information illustrated the fact that Sami and Bashir were members of the *Majlis Ashura*, or Council of Advisors, of the [Islamic Jihad]. As one of the senior advisors, Sami had input into some of the [Islamic Jihad] operations in Israel and the territories, and allegedly helped to funnel funds collected in the U.S. to Jihad headquarters.... Since then, U.S. intelligence has determined that Sami remained a member of the council of advisors."

Israel was able to obtain such information because the Mossad successfully infiltrated an agent into Islamic Jihad's offices in Damascus during the early 1990s, the former official said. The Israeli agent, a Libyan man, reportedly tipped off the Mossad prior to its October 1995 assassination of then- Islamic Jihad secretary general Fathi Shikaki in Malta.

The agent was then caught and turned over to the Syrians, who interrogated him and then executed him, the official added.

Shikaki was succeeded at the helm of Islamic Jihad by Abdullah Ramadan Shallah, who is another defendant in the case. A former colleague of Al-Arian at the University of South Florida from 1991 to 1995, Shallah abruptly left the United States and moved to Damascus in the summer of 1995, where he was quickly chosen to succeed Shikaki.

Israeli officials declined to comment.

Islamic Jihad has taken credit or been blamed for scores of shootings, bombings and suicide bombings in Israel, including the April 1995 suicide bombing in Gaza that claimed the life

of 20-year-old American Alisa Flatow, and the November 2001 shooting in Jerusalem's French Hill neighborhood in which an American citizen, Shoshana Ben-Yishai, 16, was killed and another, Shlomo Kaye, 15, injured.

Allusions to Israel's role in directing American efforts towards Al-Arian was made in a separate lawsuit filed last year against the professor by John Loftus, a controversial former prosecutor and Nazi hunter. Although the complaint was thrown out by a judge, it contains many of the allegations of last week's indictment and matches the account given by the former American official.

In his suit, Loftus claims that "client confidential sources" had told him that "the intelligence service of a friendly country alleged that they had wiretapped the Damascus, Syria, headquarters of the [Islamic Jihad]... [and] inadvertently intercepted a telephone conversation from an unknown person in Tampa, Florida."

In the alleged conversation, the caller from Tampa screams at a senior Islamic Jihad official about Hamas taking credit for a terrorist attack committed by Islamic Jihad, complaining that it would hinder his fundraising efforts in the United States for the group. Worried about the possible existence of an Islamic Jihad cell operated by a person with such stature, the friendly country shared the intercept with American intelligence and asked for assistance in identifying the Tampa caller, according to Loftus's suit. The caller turned out to be Al-Arian, the lawsuit claims.

The discovery prompted the United States to move against Al-Arian, examining his bank records and obtaining secret warrants through the Foreign Intelligence Surveillance Act to wiretap him, the suit contended.

According to the federal indictment, the FBI began bugging Al-Arian's phone and fax line in January 1994. The FBI raided his home and office in 1995 and continued to closely monitor him and his associates. However, the government was unable to bring charges against him because of restrictions in the use of intelligence information in criminal cases. The Associated Press reported this week that Al-Arian visited the White House as part of a 160-person group from the American Muslim Council in June 2001, where the group was briefed on President Bush's faith-based agenda and other issues by Karl Rove, the president's chief political adviser. (Please see separate story.)

The main obstacle to indicting Al-Arian, observers said, was that most of the material against him precedes the enactment of the 1996 Antiterrorism and Effective Death Penalty Act that barred material support to foreign terrorist groups listed by the State Department. Islamic Jihad was designated as a foreign terrorist group in October 1997.

The indictment indicates that most of the evidence stems from 1994 and the first half of 1995, when the FBI wiretaps went unnoticed. Following the FBI raids in November 1995, Al-Arian apparently stopped his allegedly incriminating conversations on the phone, using more cryptic references to Islamic Jihad support activities.

However, since the enactment of the Patriot Act last year and the court ruling, such evidence can now be used to build criminal indictments — to the dismay of civil liberties activists. Government officials note that this is precisely why they issued the indictment now.

Levitt, of the Washington Institute for Near East Policy, said that the evidence was so overwhelming that the issues of free speech and of the use of secret evidence raised by Al-Arian supporters are moot.

"The government has decided to declassify a lot of intelligence and there is no shortage of it in this case," he added.

See also: [White House Hosted Al-Arian Despite Investigation](#)

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